

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION)	MDL NO. 1456 Civil Action No. 01-12257-PBS Subcategory No. 03-10643-PBS
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THIS DOCUMENT RELATES TO: <i>The City of New York, et al. v. Abbott Laboratories, Inc., et al.</i>)	Judge Patti B. Saris Magistrate Judge Bowler

PLAINTIFFS' SECOND MOTION FOR AN EXPEDITED HEARING ON PLAINTIFFS' MOTION TO COMPEL DISCOVERY FROM DEFENDANT MERCK & CO., INC.

Plaintiffs, the City of New York and New York Counties, respectfully submit this Second Motion for an Expedited Hearing on Plaintiffs' Motion to Compel Discovery from Defendant Merck & Co., Inc. ("Merck"), which has been *sub judice* since October 2009. This is plaintiffs' second submission requesting that their motion to compel against Merck be heard. Plaintiffs' first request for expedited treatment of the motion to compel was filed on June 3, 2010. [Docket No. 7124] Thereafter, the motion was transferred to Magistrate Judge Bowler on June 21, 2010. The motion to compel concerns Merck's refusal to produce sales and transactional data for at-issue NDCs with persistent (i.e. four-quarter or longer) AMP/AWP spreads over 30%¹. Such data is among those used by plaintiffs' experts for liability and damage calculations. Plaintiffs were constrained to serve their expert reports on October 29, 2010, pursuant to Court Order, without the benefit of this Merck data.² As Merck is aware, plaintiffs' expert Harris Devor noted

¹ Merck refuses to make this production despite plaintiffs' demonstration that they are entitled to such discovery per the Court's September 28, 2009 Order [Docket No. 5605].

² Plaintiffs' expert Harris Devor noted the pendency of plaintiffs' motion to compel in his Fed. R. Civ. P. 26(a)(B)(2) report and that if the data is produced, a supplemental report as to Merck may be prepared

the pendency of plaintiffs' motion to compel in his Fed. R. Civ. P. 26(a)(2)(B) report and that, if the data is produced, a supplemental report as to Merck may be prepared.

Given the other expert discovery deadlines set forth in the operative scheduling order, and the dispositive motions plaintiffs seek to file, there will be greater efficiency for all involved (both parties and Court) if this motion is heard and decided at the Court's earliest convenience.

Dated: November 2, 2010

Respectfully submitted,

**City of New York and New York Counties in
MDL 1456 except Nassau and Orange by**

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2010, I caused a true and correct copy of the foregoing, Plaintiffs' Second Motion for Expedited Hearing on Plaintiffs' Motion to Compel Discovery from Defendant Merck & Co., Inc., to be served on counsel of record for each party through the Court's Electronic Case Filing System and via LexisNexis File & Serve.

/s/

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